

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 96-0643 FIT  
Financial Institutions Tax — Combined/Unitary Reporting  
For Tax Periods: 1992 through 1994**

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**ISSUES**

**I. Financial Institutions Tax — Combined/Unitary Reporting**

**Authority:** IC 6-5.5-1-18, IC 6-5.5-5-1(b);  
45 IAC 17-2-1, 45 IAC 17-3-2, 45 IAC 17-3-5

Taxpayer protests the inclusion of certain subsidiaries in its unitary group for purposes of reporting its Indiana Financial Institutions Tax liabilities.

**STATEMENT OF FACTS**

Taxpayer, a non-Indiana corporation, operates as a bank holding company with subsidiaries operating in a variety of states. The subsidiaries, as well as taxpayer, are primarily engaged in the business of commercial banking. A few subsidiaries specialize in real estate management and development. Structurally, taxpayer has organized its business along regional lines. That is, taxpayer has created holding companies (100% owned) in those states where taxpayer conducts business. Taxpayer's Indiana holding company, along with two of taxpayer's Indiana banking subsidiaries, filed a combined Indiana Financial Institutions Tax ("FIT") return. Another Indiana subsidiary, a mortgage company, filed a separate Indiana FIT return. After reviewing taxpayer's 1992-1994 Indiana FIT returns, Audit determined that taxpayer's unitary group should have included all of its Indiana and regional subsidiaries. Taxpayer disagrees.

**I. Financial Institutions Tax — Combined Unitary Reporting**

**DISCUSSION**

Taxpayer protests Audit's inclusion of taxpayer's non-Indiana subsidiaries in its unitary group for purposes of reporting Indiana FIT. At the time of filing, taxpayer included only those banking subsidiaries with Indiana business activities. Audit contends taxpayer's unitary group

should be more inclusive. Specifically, Audit argues that membership in taxpayer's unitary group for purposes of reporting Indiana FIT should include both taxpayer's Indiana as well as non-Indiana subsidiaries.

Taxpayer, in response, believes its non-Indiana subsidiaries cannot be members of its unitary group for purposes of reporting Indiana FIT because "they [these excluded subsidiaries] lack the elements necessary to be classified as a unitary business." Taxpayer's Protest Letter, 11-22-96, p.2. That is, taxpayer and subsidiaries fail to satisfy the unity of operation and unity of use requirements. (See IC 6-5.5-1-18(b) "*Unity is presumed whenever there is unity of ownership, operation, and use....*"). As examples of the non-centralized relationship among taxpayer and its non-Indiana subsidiaries, taxpayer notes the absence of common officers, common customers, and the sharing of common office space. Each entity's officers make autonomous decisions. Additionally, each entity (by state/region) has its own accounting and tax personnel.

Taxpayer also notes that taxpayer and its subsidiaries were organized for federal and state regulatory purposes as separate state holding companies. Taxpayer explains:

This structure [the organization of holding companies on a state-by-state basis] was mandated by federal regulatory law to prevent interstate banking. [Taxpayer] was constrained to organize their structure along state lines to comply with the federal banking regulations. [Taxpayer] was thus required to establish a separate holding company in each state in which it wanted to conduct banking business.

Id.

From taxpayer's perspective, "[taxpayer] and its subsidiaries hold themselves out to be unitary businesses *by state*...[that is] all the entities in Indiana hold themselves out to be one organization, while all the entities in Florida hold themselves out to be one organization (emphasis added)." Id. at 4.

An excise tax, the Financial Institutions Tax (FIT), is imposed on all entities deemed to be "transacting the business of a financial institution in Indiana." 45 IAC 17-2-1. An entity subject to FIT *must adopt the combined/unitary reporting methodology unless the taxpayer is not a member of a unitary group*. Otherwise, separate (single-entity) reporting is required. Consolidated reporting is never permitted. 45 IAC 17-3-2. For those taxpayer's that are members of a unitary group, the combined return must cover "all the operations of the unitary business and include all taxpayers of the unitary group." 45 IAC 17-3-5(a). "A 'unitary business' means business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually, or as a group, in transacting the business of a financial institution." 45 IAC 17-3-5(c). "Unity is presumed whenever there is a unity of ownership, operation, and use evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction among entities that are members of a unitary group." Id. However, if a taxpayer determines that reporting on a combined basis fails to accurately reflect its Indiana income, taxpayer may request to file separate returns. IC 6-5.5-1(b).

All parties agree that taxpayer is a member of a unitary group. The parties, however, disagree, as to the makeup of such group. Taxpayer believes membership should be limited to only those entities (the Indiana holding company and its two subsidiaries) conducting banking activities within Indiana. Audit, though, believes all of taxpayer's state holding companies, along with its corporate members, should be part of taxpayer's unitary group.

In this instance, unity of ownership is uncontested. And functionally, taxpayer and its subsidiaries are engaged in the same related lines of business—commercial banking and real estate management and development. With regard to unity of use and operation, the corporate parent provides a variety of corporate systems and services to its regional subsidiaries—e.g., accounts payable, general ledger, fixed assets, audit systems, as well as payroll, legal, marketing, advertising, and human resources, and information management services.

Given the attributes of common ownership, closely related lines of business (banking and real estate), and a sufficient quanta of centralized control and management as evidenced by corporate policies, products, and services—the Department finds that there exists sufficient indicia of unity and “controlled interaction” amongst the entities to conclude that taxpayer's unitary group should have included both its Indiana and non-Indiana subsidiaries.

### **FINDING**

Taxpayer's protest is denied.